DOCUMENT RESUME

ED 245 285 CS 504 618

AUTHOR Rappaport, Josh
TITLE New FCC Goal in Ownership Regulation.
INSTITUTION Freedom of Information Center, Columbia, Mo.
REPORT NO FOI-493
PUB DATE May 84
NOTE 6p.
PUB TYPE Information Analyses (070)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Broadcast Industry; *Cable Television; Consumer Protection; Federal Government; *Federal Regulation; Higher Education; Mass Media; Policy Formation; Programing (Broadcast); *Television
IDENTIFIERS *Federal Communications Commission; *Ownership

ABSTRACT

By first describing the historical stance of the Federal Communications Commission (FCC) toward ownership of broadcast facilities and then describing the FCC's most recent policy statements, this report compares the differing viewpoints and recognizes that the new value or goal that seems to have been established conflicts with the past emphasis on diverse ownership. The report asks and answers the following questions: (1) To what extent is the new goal changing FCC ownership policy today? and (2) To what extent might it do so in the future? It then examines two Notices of Proposed Rulemaking on FCC ownership issues--one that would eliminate the Commission's cable-network cross-ownership restrictions, and one that would modify the Commission's group ownership regulation known as the Rule of Sevens. Regarding the first proposal, the report shows that certain efficiencies can be produced by allowing cable and network systems to engage in common ownership. The goal of diversity, the report contends, is not at jeopardy; and the repeal of the cross-ownership rule would serve the consumer's interests. Opposition, it notes, lies in questioning the extent to which efficiency will bring about real change and diversity of programing. Regarding the Rule of Sevens, the report posits that larger scale group ownership made possible through changing the rule would allow for both more efficient broadcasting and the creation of new networks that will compete with those already established and provide better programing from which the consumer can choose. (CRH)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED245285

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)
X This document has been reproduced as received from the person or organization originating it.
☐ Minor changes have been made to improve reproduction quality.
• Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

SCHOOL OF JOURNALISM, UNIVERSITY OF MISSOURI AT COLUMBIA
MAY, 1984

NEW FCC GOAL IN OWNERSHIP REGULATION

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

Paul Fisher

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

FREEDOM OF INFORMATION CENTER REPORT NO. 493

This report was written by Josh Rappaport, a Master's candidate at the University of Missouri School of Journalism.

Historically, the Federal Communications Commission's policy toward ownership of broadcast facilities has been guided by one principal goal—promoting diversity in ownership.[1] In recent years, however, the importance of promoting ownership diversity has declined, to an extent which led the FCC to write in September 1983:

> Of these objectives, the Commission has in its various ownership policies placed "principal reliance on ensuring diversity in sources of information because of the part such diversity serves in reaching First Amendment goals." Even diversification must give way, however, if when all factors are considered, the "public interest harms outweigh the potential gains that would follow" if the diversification-maximizing action were taken. A key factor to be considered in this regard is whether the action maximizing diversification would hinder "the best practicable service to the American public." Thus, proper review of national ownership policy involves separate consideration of the treatment of First Amendment and economic policy issues, as well as an examination and balancing of competing public interest concerns.[2]

Actually, this says more than the old goal of diversity has declined; it suggests that there is a new goal in ownership policy. But in order to understand this new goal as well as the passage, one must know how to interpret "the best practicable service to the American public." This concept is presented thus:

> One concern which has been generated by the inequities inherent in the rule's application is that in the course of furthering ownership diversity, the "seven station rule" may actually limit the "diversification of program and service viewpoints" that it was intended to advance. This is because the rule may in some instances preclude the possibility of realizing the benefits inherent in program production or acquisition for large audiences. Ownership of a sufficient number of stations to generate a base for quality program production might well facilitate development of a new over-the-air television network in the future. It is likely in any case to lead to expanded production of programming for national, regional, and group presentation to the viewing and listening publics. The access to a larger potential audience which a group owner enjoys reduces the level of difficulty involved in getting initial distribution of an unproven first-ran show or series, cuts marketing expenses, and assists in generating revenues that could be used to finance even more attractive, higher quality programming. Co-operative production or distribution by larger groups is another possible vehicle by which enhanced programming options can be provided.[3]

This passage says that for the broadcasting media, economics of scale generally allow viewers to receive better service. As a broadcasting group grows, the FCC suggests, its ability to purchase, distribute and air better quality shows increases. The tone in this passage is noteworthy; the effects of large group ownership are "benefits," the pro-

Summary:

Diversity, the long-established goal of FCC ownership policy, is being challenged today by a new goal — meeting the desires of the public. Significant rule changes are being proposed, including changes in the network-cable cross-ownership rule and the "Rule of Sevens."

CS504 618

gramming such ownership makes possible is "more attractive, higher quality," the increased number of choices it fosters yields "enhanced programming options." In effect, these offshoots of larger group ownership are made to look attractive. They describe the established goals of the Commission.

In this passage, the FCC is saying that diversity of ownership is no longer an absolute value in its ownership regulatory policies. A new value, a new goal has crept into the picture.

In light of this, the earlier passage seems to be describing a conflict. Diversity of ownership as an absolute goal would compel the FCC to pursue the maximum possible amount of diversity—"diversification-maximizing action," as the passage says. This would entrust the ownership of broadcasting outlets to the most people possible. But that action would work to prevent large group ownership and all its benefits. Thus, the established goal of diversity meets the new goal—benefits of large scale ownership—and the result is a direct conflict. Diversity, the established goal, is being told here that it must make room for the new goal. These two "competing public interest concerns," the FCC is saying, will need to undergo "balancing" in the future judgments on "national ownership policy issues."[4]

In regard to this new goal—efficiency—this report will ask two questions:

1) To what extent is it changing FCC ownership policy today?

2) To what extent might it do so in the future?

The report will examine these questions by studying two proposed 'Notices of Proposed Rulemaking on FCC ownership issues. The first, adopted July 15, 1982, proposed eliminating the commission's cable-network cross-ownership restrictions.[5] The second, adopted Sept. 22, 1983, propose modifying the commission's group ownership regulation known as the "Rule of Sevens."[6]

The hope is that through studying these issues the importance or unimportance of this new goal will, to some degree, come to light.

CROSS-OWNERSHIP REVERSAL PROPOSED

The cable-network cross-ownership restriction, Section 76.501 (a)(1) of the FCC's Rules,[7] prohibits common ownership of cable television systems and national television networks.[8].

When the rule was adopted in 1970, three principal reasons were given for its creation. One, the FCC feared that cross-ownership of cable systems and national television networks might hinder the development of diverse programming in cable. Cable operators, the FCC thought, might be tempted to use the less expensive, already-available shows of the networks and become lax about creating their own programs.[9] Secondly, the commission expressed concern that large investments by national networks could quash the free development of and competition among cable networks, a predicament which would also decrease diversity in broadcasting.[10] Finally, the FCC was worried that by allowing the networks to enter freely into cable systems it would only be allowing the already puissant networks to become more powerful. Here once again, fear of a reduction in diversity of programming was the key motivator.[11]

Seven years after the cross-ownership rule took effect the FCC began to question whether or not it was appropriate. In 1977, a "Notice of Inquiry" on this matter was adopted.[12] Later, a special staff prepared a "Further Notice of Inquiry."[13] In October 1980 that staff's final report called for the repeal of the rule.[14] A year later, in November 1981, a study of the issue by the FCC's office of Plans and Policy also recommended repeal.[15] The following July, the commission called for repeal of the rule in its "Notice of Proposed Rulemaking."[16]

Using arguments from previous studies and from studies of its own, the commissioners launched a two-front attack on the anti-cross-ownership rule in its notice of inquiry. The commission's first line of attack stated that there is no longer any need for the rule. This in itself is no mandate for repeal, but it makes repeal more acceptable. Using statistical and trend analyses of the cable television industry, the commission attacked each of the three reasons given for the creation of the rule and argued that they were outdated.[17] In general, the commission tried to show that, since its early days in 1970, cable television had progressed rapidly, so rapidly in fact that it was financially safe from the predatory interests of television network barons.[18]

But things no longer considered necessary do not, for that reason alone, suddenly get eliminated. And this holds in the case of the cable-network cross-ownership rule as well. The proposal to eliminate was not made because the rule was unnecessary, but rather because some thought eliminating it was advantageous.

In the conclusion of the "Notice's Regulatory Flexibility Act," the commission makes clear its motives:

> The Commission desires to eliminate regulatory intervention in the marketplace to the maximum extent consistent with its responsibilities and policy objectives. Review of the network/cable cross-ownership indicates that this limitation is not necessary as a means of assuring program diversity in local or national video markets and that it may be precluding the realization of cost benefits which might result from network/cable cross-ownership.[19]

In this passage, these "cost benefits" are the only goal. After describing developments since 1970 that indicate repeal of the rule is not dangerous, the FCC writes:

> Given these developments, as well as what we now perceive to be the questionable nature of some of the assumptions which initially underpinned the network ownership prohibition, we believe that the network/cable cross-ownership rules should be eliminated to permit the transfer of technical and marketing knowledge across traditional media lines and to permit market forces to bring out whatever efficiencies are associated with common ownership between the two industries.[20]

In a different passage, the notice spells out what kinds of efficiencies these would be:

> Vertical integration exists when transactions between buyers and sellers occur within a single firm. Thus, the combination of a television network, which packages programming, and a cable television system, which distributes it, is vertical....Efficient vertical integration...is said to provide benefits, including an improvement in consumer welfare by reducing the costs and risks associated with market transactions....Vertical integration may also facilitate the flow of information between stages of production, but marketing and distribution costs, and create economies of scale since overhead costs may be spread vertically as well as horizontally.[21]

The network-cable cross-ownership rule begins to look like a clear example of the influence of the commission's new regulatory goal. Certain efficiencies can be produced by allowing cable and network systems to engage in common ownership. Here the goal of diversity, in the commission's opinion, is not at jeopardy. Therefore the goal of efficiency, which serves the consumers' interests, is encouraged by the repeal of the cross-ownership rule.

Still, there remains the deeper question: To what extent will the mere goal of efficiency bring about real change? In other words, what are the chances that the rule will in fact be eliminated?

The vote approving the "Notice of Proposed Rulemaking" fell 6-0 in favor of eliminating the rule.[22] Three of the commissioners who voted for elimination are current members of the commission. These three, Chairman Mark Fowler, Henry Rivera and James Quello already form a majority (**Washington Post**, Feb. 2, 1983) on the now five-person commission. It is likely that they will also have an ally in newly appointed Dennis R. Patrick. Patrick, a former legal clerk for National Security Adviser William Clark, was appointed by President Reagan and favored by Fowler,[23] both of whom are pro-deregulation. An additional advantage for the deregulators is seen in a change in heart by the National Cable Television Association and by Time Inc., which owns the Home Box Office cable system. In a telephone interview (Nov. 29, 1983), Jonathan Levy, an economist in the FCC's Office of Plans and Policy, said that these two organizations, which continually used to oppose lifting the cross-ownership restriction, recently filed comments on the notice "mildly" endorsing the elimination of the regulation. This might be seen as further evidence that there is little perceived harm in repealing the rule, which boosts the deregulators' side.

On the other hand, three of the commissioners have said they are worried that outright repeal of the rule could lead to undesirable levels of ownership concentration. In a separate statement (neither concurring nor dissenting), Commissioner Mim Dawson said that "undue concentration of control" could develop if the rule is repealed and suggested that concentration levels be continually monitored.[24] Commissioner Rivera, in a separate concurring statement also expressed fear:

> It appears wasteful, for instance, to issue a Notice proposing to allow the major networks to become cable operators before conducting a general inquiry into indicia of permissible media concentration. It might be, for example, that the control exercised by these entities by their national video distribution network and through their owned stations is so pervasive that they should not be allowed to enter the cable ownership market at all.[25]

Finally, Ken Howard, legal assistant to Commissioner Quello, said in a telephone interview (Dec. 5, 1983) that Quello too is concerned that the rule's repeal could engender too much concentration. But Howard said the concerns of Quello, Rivera and Dawson, while realistic, are hard to assuage because to his knowledge no one knows how to define the market in which to look for undue concentration. The long and the short of the situation, according to Howard, is that as long as no one has nor is developing the method for defining this market, these commissioners' concerns will lie fallow.

In sum, there is strong support among the commissioners for outright repeal of the rule. At the same time, several commissioners may be unwilling to support such outright repeal. Marcia Glauberman, who works closely with the cable-network "Notice of Proposed Rulemaking" and is with the Policy and Rules Division of the FCC's Mass Media Bureau, said that the issue is tentatively scheduled to be a commission agenda item in the last quarter of 1984. She said the commission will, however, probably deal first with the "Rule of Sevens."

RULE OF SEVENS MODIFICATION PLAN

In the early days of the "Rule of Sevens," the rule's foundation was the desire to make the public's sources of information as diverse as possible.[26] During the 1950s, it was common for the commission to say that the rule's main purpose was "to promote diversification in ownership in order to maximize diversification of program and service viewpoints as well as to prevent any undue concentration of economic power contrary to the public interest."[27]

This goal made sense at that time because it was more difficult to maintain diversity than it is today. Because there were four times fewer television stations at the time than there are today, a merger carried more weight, and the commission was more concerned about monitoring "undue concentration."

But as the marketplace has changed, the significance of its rules has also changed, and the FCC was the first to admit this when it undertook to revise the "Rule of Sevens" three months ago. As it said in the introduction to its "Notice of Proposed Rulemaking," "The dramatic changes in the communications marketplace during the three decades the rule has been in effect, as well as the increased programming diversity likely to result from its relaxation suggest that this action (proposing modifying the rule) is in order."[28]

But what does the FCC mean here? How is the communications marketplace so different? The FCC gives several answers.

First, it says that the sheer number of broadcast outlets has surged since 1953 when the "Rule of Sevens" was adopted. Statistics bear this out. For example, one study notes that between 1953 and 1983 the number of television stations has increased 466 percent; AM stations, 92 percent; and FM stations, 561 percent.[29]

As further evidence of change in the ownership structure of broadcast media, the notice says that the cable broadcast media have grown. "Further evidence of the need for this review is the enormous growth which has occurred in cable television and other non-traditional programming sources."[30]

The commission also says that by limiting the number of stations one may own, the "Rule of Sevens" might have had the effect, not necessarily desired, of keeping the three major networks free from competition.

> By maintaining regulations which tend to interfere with development of additional programming, the Commission may inadvertently be strengthening the significant role of the three major networks in national program distribution.[31]

The expansion of broadcast outlets and the event of new types of broadcast media suggest to the commission that there is less need for the "7-7-7" ceiling than there used to be. The idea that revising or eliminating the rule might create more competition for the networks swinging the commission in favor of such revision of elimination.

But an important consideration behind the "Notice of Proposed Rulemaking" appears to be the goal of efficiency in broadcasting.

As the FCC explains in paragraph 38, group ownership such as would be promoted through revising or eliminating the "Rule of Severs" can benefit media owners:

> Ownership of a sufficient number of stations to generate a base for quality production might well facilitate development of a new over-the-air television network in the future. It is likely, in any case, to lead to expanded production of programming including non-entertainment programming for national, regional and group presentation to the viewing and listening publics.[32]

In this passage, the FCC is suggesting that the larger-scale group ownership made possible through changing the "Rule of Sevens" would allow for more efficient broadcasting.

The FCC sets out three goals in its "Rule of Sevens" proposal. First, to strengthen broadcast stations and improve broadcast service.[33] Secondly, to help radio and television broadcasters compete with alternative broadcast technologies, such as cable.[34] Thirdly, to increase the diversity of the broadcasting fare, or at least to detract from the power base of the three major networks.[35]

Competition is the key to the second goal, and diversity is the key to the third goal. But the new goal in broadcast ownership, efficiency, shows itself to be the key behind the first goal.

The question remains: How strong are the chances that the "Rule of Sevens" will actually be modified or eliminated?

At this point, the only data to go by is the vote on the "Notice of Proposed Rulemaking." Three of the five commissioners voted for the notice. Patrick had not yet joined the commission, and Rivera dissented, issuing a separate statement. The three would constitute a voting majority, and the odds seem good that Patrick, being a conservative, would join the majority's side. Rivera would seem to have a hard time gathering much support.

The majority seem to agree that any modification of the rule should allow for the creation of new networks. During the session in which the notice was approved, Dawson and Rivera both asked whether the major networks should be subjected to tougher ownership limitations than other groups. Quello said he thought such a restriction would encourage competition for the three major networks and said he favored the idea.[36]

Fowler also said he would like to see new networks vie with ABC, CBS and NBC. In a 1982 interview, Fowler said:

> One of the things we (the FCC) want to look at is the current rule that precludes anyone from having more than seven AM radio stations, seven FM radio stations and seven TV stations. We want to see whether it is not time to strike that down so that broadcasting firms, such as Stover or Westinghouse or Taft, can own more stations and perhaps emerge as bigger competitors for the networks. Such growth could lead to greater consumer choice and better programming.[37]

Since the notice was issued, one commissioner has taken action to consider a different tool for limiting the extent of group ownership.

Trevor Potter is assistant general counsel in the FCC's Office of General Counsel. In a recent telephone interview, Potter said that Dawson asked the FCC's Office of Plans and Policy to review the possibility of limiting a group's extent through limiting the size of audience it is allowed to reach. Potter said this proposal was considered in 1953 and 1964.

Potter is currently writing up the first draft of the "Report and Order" on the "Rule of Sevens." The "Report and Order" analyzes comments made by the general public on the "Notice of Proposed Rulemaking" and sometimes advocates a certain course of action. Potter said he could not say when the "Rule of Sevens" would be ruled upon by the commission, for there are too many possible ways the issue may take. He said the next step is for the commission to review the "Report and Order". That should occur in mid-June, he said.

CONCLUSION

In the cable-network cross-ownership notice, the goals of

diversity and efficiency were primarily opposed. An increase in either one might decrease the other.

Interestingly, the two goals are not opposed in the "Rule of Sevens" issue. To several commissioners, in fact, increases in station efficiency might aid the diversity of broadcast by providing challenges to the major networks, not to mention keeping a challenging stance toward the new technologies.

There is no reason to think, therefore, that diversity and efficiency must work in opposite ways. Still, the extent to which efficiency becomes an actual workable goal of the FCC is something that only time will tell.

FOOTNOTES

1. Network Inquiry Special Staff, **New Television Networks. Entry, Jurisdiction, Ownership and Regulation** (Washington, D.C.: Federal Communications Commission, 1980), p. III-4.
2. 83 F.C.C. 2d (Docket #83-440), paragraph 40.
3. Ibid., paragraph 38.
4. Ibid., paragraph 40.
5. 82 F.C.C. 2d (Docket #83-434).
6. 83 F.C.C. 2d (Docket #83-440).
7. 76 501 Cross-Ownership (a) No cable television system (including all parties under common control) shall carry the signal of any television broadcasting station if such system directly or indirectly owns, operates, controls, or has an interest in: (1) a national television network (such as ABC, CBS, or NBC);
8. 82 F.C.C. 2d (Docket #82434), paragraph 1.
9. Ibid., paragraph 6.
10. Ibid.
11. Ibid., paragraph 2.
12. 23 F.C.C. 2d, p. 382.
13. 69 F.C.C. 2d, p. 1524.
14. Special Staff, **New Television Networks: Entry, Jurisdiction, Ownership and Regulation**, p. III-163.
15. Kenneth Gordon, Jonathan D. Levy and Robert S. Preece, **FCC Policy on Cable Ownership** (Staff Report, FCC Office of Plans and Policy), November 1981, p. 124.
16. 82 F.C.C. 2d (Docket #82-434).
17. Ibid., paragraph 12-22.
18. Ibid.
19. Ibid., Regulatory Flexibility Act, paragraph VIII.
20. Ibid., paragraph 26.
21. Ibid., paragraph 23.
22. Ibid.
23. Interview with Ken Howard, legal assistant to Commissioner James Quello (12-5-83).
24. 82 F.C.C. 2d, pp. 92-94.
25. Ibid., p. 94.
26. 83 F.C.C. 2d (Docket #83-1009), paragraph 11.
27. Ibid.
28. Ibid., paragraph 1.
29. Federal Communications Commission, 47th **Annual Report** 96-98 (FY 1981).
30. 83 F.C.C. 2d (Docket #83-1009), paragraph 28.
31. Ibid., paragraph 39.
32. Ibid., paragraph 38.
33. Ibid.
34. Ibid., paragraph 28.
35. Ibid., paragraph 39.
36. "Taking the lid off multiple ownership," **Broadcasting**. Sept. 26, 1983, p. 27.
37. "Latest Plans to Loosen the Reins on Broadcasting," **U.S. News and World Report**, April 12, 1982.